Office-Supreme Court, U.S.
FILED
MAY 30 1985
ALEXANDER L. STEVAS,
CLERK

NO. 84-1587

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

BEAUFORD D. EDDLETON, Petitioner

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

REPLY BRIEF OF PETITIONER

Robert S. Ganey
Attorney at Law
P. O. Box 174
Hanover, Virginia, 23069
Counsel for Petitioner
(804) 798-6912

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Respondent's position (pg.4 Resp. Memo). that the decision of the Fourth Circuit Court of appeals in this case "does not conflict with the decision of any other Court of appeals" is just not correct. The decision in fact conflicts

with all the cases cited on pages 10 and 11 of the petitioner's brief.

The decision conflicts because it restrictively applies the two remedies (specific performance of plea agreement, withdrawal of guilty plea) of Santobello v. United States, 404 U. S. 257, to the facts of this case. Because the petitioner had served his jail sentence the Fourth Circuit's approach conflicts with decisions of other circuits which have recognized that circumstances sometimes exist "where withdrawal of the plea or specific performance would be meangingless or infeasible" United States v. Garcia 698 F 2d 31 (1st Cir). The Garcia Court pointed out that it could "order imposition of a specific sentence" as a "choice of relief". This view is adopted and accepted by

other authority. United States v. Bowler, 585 F 2d 851 (1978) (7th Cir.). See also Correale v. United States, 479 F 2d 944 and the cases cited at pages 10 and 11 of petitioner's petition previously filed.

Also the Fourth Circuit decision, and the Respondent's Memorandum, chose to ignore Lane v. Williams, 455 U. S. 624. Lane stands, in part, for the proposition that once a Fifth Amendment Violation of a plea agreement occurs a defendant should be granted relief because of the harm and consequences which follow when the government does not live up to its plea bargain.

The petitioner has relied on Lane throughout these proceedings. He relied on Lane to obtain a reversal of his extra 30 day jail sentence because the

Lane Court made it clear that unless a defendant chose to withdraw his plea he was not subject to additional penalties. Lane pg. 630-631.

But Lane also clearly sets guidelines which should have been followed once the finding was reached, and not appealed, that the plea agreement had been breached. Following that finding, which occurred by the May 10, 1983, order of Judge Lowe in this case, there should have been a hearing to determine what harm and consequences flowed as a result of that breach. Then the sentencing Court should have attempted to remedy the harm and consequences. In this case the sentencing Court, the District Court, and the Fourth Circuit, have met none of the requirements of Lane v. Williams 455 U. S. 624.

Other Circuits have and are meeting these requirements.

A number of the points raised by the Respondent are clearly not properly before this Court because the only issue which has been appealed is whether the petitioner is entitled to have his fine and probation vacated or suspended. The government did not appeal the finding of Judge Lowe on May 10, 1983, that the plea agreement had been breached.

Also the government's position that the petitioner had been granted all the relief to which he was entitled to because he was allowed a resentencing should be summarily dismissed by this Court. Judge Warriner rejected that argument when he observed in his September 1983, opinion that the petitioner was entitled to "substantive relief" and not merely "procedural"

relief. Again the government did not appeal that decision.

Similarly the respondent's reliance on United States v. Benchimol, No. 84-1165 (May 13, 1985) is misplaced and incorrect. Since the Benchimol case was decided several years after the plea bargain finding in this case it does not affect the petitioner's claim for relief. In this case Magistrate Lowe affirmatively found that the government had cross examined petitioner's character witnesses in such a manner that the Court had no alternative, regardless of its views of the government's conduct, but to find a violation of the agreement. The only real restraints against this type of conduct by the government are the findings that the Court reached, and relief for the petitioner.

The respondent's effort to deprive the petitioner of relief on the mistaken ground that this is a "fact-bound challege" should be rejected. It is true that all the undisputed facts support a suspension of the fine and probation, but as the Court can see this case raised serious questions of the Fifth Amendment rights of petitioner to relief.

The respondent also misunderstands how discretion should be used in arriving at a correct decision in this case. (pg. 5 Resp. Brief). The sentencing Court certainly has discretion in its choice of relief. But because of the Fifth Amendment violation the Court must choose relief. The discretion comes in the choice of relief. There is no discretion to choose

no relief since the fine is still due and since the petitioner has suffered greatly.

The Respondent would ask this Court to believe the Government is above the law and not responsible for its breaches of plea agreements. This is not the case. The Court should and must grant a writ of certiorari in this case to assist the petitioner and to prevent future breaches by the Government.

BEAUFORD D. EDDLETON

BY _____
Counsel